

IN RE ARBITRATION

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FREE SPEECH COALITION INC.,)
et al.,)
 Plaintiffs,) CIVIL ACTION NO.
vs.) 2:09-4607
THE HONORABLE ERIC H. HOLDER,)
JR., Attorney General,)
 Defendant.)
- - - - -

DEPOSITION OF STEVEN DAVID STEINBERG

FRIDAY, APRIL 19, 2013

BEHMKE REPORTING AND VIDEO SERVICES, INC.

BY: DAWN EILEEN HOWARD, CSR NO. 13201

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BEHMKE REPORTING AND VIDEO SERVICES, INC.
(415) 597-5600

1 Q. Do you recall when that was?

2 A. Nineteen -- when I started taking -- I mean,
3 I've taken vacation photographs all my life. But 1999
4 was when I first started doing sexual photography.

5 Q. How did it happen that you started doing that?

6 A. I had been working with a photographer -- a
7 growing network of photographers for Cupido for some
8 time and had become close friends with some of the
9 photographers, and was encouraging them to move in
10 certain directions with their photography. And one
11 photographer in particular got annoyed with me and said,
12 "David, if you want -- I'm doing the kind of photography
13 I want to do. If you want to do that kind, then why
14 don't you do your own?"

15 So I was actually quite fascinated with the
16 project of trying to get honest photographs of people
17 being sexual. It's a funny project. Sex is a private
18 matter. If there's a photographer there, how can you
19 possibly get people being genuine and natural in that
20 circumstance? So I was curious to see what that was
21 like.

22 And I had some friends who at that time were
23 the owners of Spectator Magazine, and they volunteered
24 to be my guinea pigs. And we did a photo shoot where I
25 was photographing the two of them. And, somewhat to my

1 surprise, we got some beautiful photographs. Cupido
2 loved them, put me on the cover, and encouraged me to do
3 more. I've showed some of the prints from those
4 photographs to other people in the whole network that we
5 were part of. And, "Oh, photograph us. Photograph us."

6 So the next thing I knew I was taking pictures
7 of all sorts of people, and I've done 160 couples in the
8 last 12 years. It's kind of taken off. Before that I
9 was a writer, not a photographer. Now all of a sudden I
10 don't have time to write anymore.

11 Q. Did you take classes in photography when you
12 decided you wanted to become a photographer?

13 A. Never. I really know very little technically
14 about photography. People -- you know, I shoot film,
15 and I shoot digital photographs, for example. People
16 say, "What kind of film do you use?"

17 I say, "Black and white," you know. I mean,
18 it's all very low tech to me, and I enjoy keeping it
19 that way. I get very bored when photographers start
20 talking about their cameras and their equipment.

21 Q. So do you use just a 35-millimeter SLR camera?

22 A. Yes.

23 Q. And you've never gone to digital?

24 A. No. Although, my friend Michael Rosen thinks
25 I'm crazy, but I'm -- partly because I'm lazy and partly

1 because I really like film, and I like -- I'm just stuck
2 in my ways.

3 Q. Do you develop the film yourself?

4 A. No. I have a lab that does my -- all of my
5 developing and printing.

6 Q. And you only take black and white?

7 A. I take a little bit of color, but -- and Cupido
8 encourages me. They want more color, but I mostly do
9 black and white. I think it's more artful. And,
10 especially in the realm of sexual photography, I'm
11 trying to take my photography out of the mindset that
12 people are used to with sexual photography, which is
13 related to commercial pornography, which is almost all
14 in color. So being in black and white helps put me in a
15 different category.

16 Q. You mentioned your very first photo shoot ended
17 up being in Cupido?

18 A. Yes.

19 Q. So did you -- did your photography become
20 commercial, something you did for money right away,
21 then?

22 A. Yeah, it did. It was quite surprising.
23 Barbara Nitke -- not to take up your time, but Barbara
24 Nitke, when I work, I have always admired. I showed her
25 some of my initial photographs. And she said, "David,

1 you have to take this seriously. How often do you come
2 on something that's useful that you do well, that's fun
3 to do, and that you can make money from?"

4 So at that point it was just kind of a lark for
5 me. But at that point I really started saying, "Oh, I
6 can do something significant with this. And, plus, all
7 of a sudden everybody I knew wanted to be photographed.

8 Q. Since the time you started as a photographer,
9 what has -- how has your career progressed?

10 A. Well, initially, it was for Cupido. Initially,
11 it was people I knew. It's expanded. People have seen
12 my work. People have asked to reproduce my work. I now
13 get requests from strangers who want me to photograph
14 them. I've been in lots of art shows. I've won awards.
15 I was declared erotic photographer of the year in 2010,
16 I think it was, by the Leydig Trust in London. I was
17 declared one of the first of the initial five masters,
18 so-called masters of erotic art by the Seattle Erotic
19 Art Festival last year.

20 And I have a following now. I think people
21 appreciate sexual photography that's genuine, that you
22 would look at them and say, "Oh, these are regular
23 people. This could be me in this photograph." When I
24 show my work, that's mostly what people respond to,
25 because I don't pose my models. I don't tell them what

1 to do. I just say, "Try to be natural and be yourself."
2 I'm just trying to document who you are.

3 Also, I've done a number of specialties,
4 including older people, people who are not
5 traditionally, quote, "beautiful." Heavy people. I'm
6 doing a whole series of people with disabilities who's
7 sexuality nobody takes seriously. Because one of the
8 messages in the work that I'm trying to do is that you
9 don't have to be young and thin and glamorous to be
10 sexually attractive and wonderful sexually.

11 Q. When you take these photographs, where do
12 you -- where does it happen?

13 A. Almost always I photograph people where they
14 live, because I think that's where people are most
15 comfortable. I don't work in studio. I have debates
16 with other photographers about that. But I'm convinced
17 that, at least for the photography that I'm interested
18 in, which, as I say, is getting people to be honest and
19 natural and genuine. The best place to have that happen
20 is when they're at home.

21 Q. Do you use lighting, specialized lighting?

22 A. Yeah, I have basic lights, two tripods with hot
23 lights and umbrellas. And I move my lights around,
24 again, because I don't pose people. I don't say, "Be
25 here. Do this." Sometimes people will say, "Well, what

1 do you want us to do?" And I say, "Well, it's up to
2 you."

3 I mean, the whole thing that I do is to try to
4 make people feel comfortable with me, comfortable with
5 the unnatural situation of being photographed while
6 being sexual, so that hopefully they can be sexual in
7 more than a superficial way. And then I get the
8 photographs that I think really had something to say
9 about being sexual people.

10 Q. So at this point -- I mean, from the time you
11 became a photographer, did you make your living from
12 doing that?

13 A. Partially, I do. It's not the only thing I do
14 for money, but yeah. Yeah, pretty much from the time I
15 started I started earning income from it.

16 Q. What are the other components of your income?

17 A. I have a business that I've owned for 30 years,
18 selling herbs and teas and spices to health food stores
19 in Santa Cruz. I mean, I make some money from my
20 writing. And at this point -- I mean, I'm 68 years
21 old -- a fair amount of my income comes from investments
22 that I get dividends from.

23 Q. Between --

24 A. Oh, and, sorry, Cupido, where I get commissions
25 on the work of other people's photography that I sell to

1 A. Yes.

2 Q. Is there anything else that you're working on
3 in terms of publication?

4 A. No.

5 Q. You have an office, correct?

6 A. Yes.

7 Q. And it's in San Francisco?

8 A. Yes. It's part office, part residence. And
9 then my permanent residence is in Santa Cruz.

10 Q. Okay. So you live --

11 A. Both places. Sorry.

12 Q. That's okay.

13 A. Wait until she finishes.

14 Q. Why do you have an office?

15 MS. BAUMGARDNER: Objection.

16 Go ahead.

17 THE WITNESS: I was spending so much time
18 driving up and down between Santa Cruz and San
19 Francisco, I just decided I needed a place in San
20 Francisco, both as a residence and -- part of it was as
21 a -- it was somewhat related to the Divas photography,
22 as a place that I could do photography with people.

23 I was sometimes driving people all the way down
24 to Santa Cruz to take photos of them because where they
25 lived didn't work. And so it was -- and then as long I

1 Q. Where do you keep those records?

2 A. A filing cabinet. Oh, you mean where -- in San
3 Francisco.

4 Q. In your office?

5 A. In my office, yes.

6 Q. So you have a filing cabinet with hard copies
7 of the photo IDs and their releases?

8 A. Yes.

9 Q. In a separate filing cabinet?

10 A. Yes.

11 Q. Okay. And then there's a computer spreadsheet.
12 Is that what you do to comply with the
13 cross-referencing?

14 A. Yes.

15 Q. Have you made 2257 statements on -- for
16 anything?

17 A. "Made," I don't know what that means.

18 Q. Like, you said that "Photo Sex" had a 2257
19 statement, but it was the publisher that included that
20 in the book.

21 A. Yes.

22 Q. Has any of your work included 2257 statements
23 that you created?

24 A. No, I don't -- no.

25 Q. When you exhibit a work at a gallery, does it

1 STATE OF CALIFORNIA)
2) Ss.
3 COUNTY OF SAN FRANCISCO)
4

5 I hereby certify that the witness in the
6 foregoing deposition, STEVEN DAVID STEINBERG, was by me
7 duly sworn to testify to the truth, the whole truth, and
8 nothing but the truth, in the within-entitled cause;
9 that said deposition was taken at the time and place
10 herein named; that the deposition is a true record of
11 the witness's testimony as reported by me, a duly
12 certified shorthand reporter and a disinterested person,
13 and was thereafter transcribed into typewriting by
14 computer.

15 I further certify that I am not interested in
16 the outcome of the said action, nor connected with, nor
17 related to any of the parties in said action, nor to
18 their respective counsel.

19 IN WITNESS WHEREOF, I have hereunto set my hand
20 this 1st day of May, 2013.
21
22

23 -----
24 DAWN E. HOWARD, CSR NO. 13201
25 STATE OF CALIFORNIA